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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/970,594 | 10/04/2001 | James A. Hellbusch | | 1193 |
| 31083 | 7590 | 08/29/2006 | | |
| THOMTE, MAZOUR & NIEBERGALL, L.L.C. 2120 S. 72ND STREET, SUITE 1111 OMAHA, NE 68124 | | | | |
| | | | EXAMINER MCKANE, ELIZABETH L | |
| | | | ART UNIT 1744 | PAPER NUMBER |

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/970,594

Applicant(s)

HELLBUSCH ET AL.

Examiner

Leigh McKane

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,9,12,15-19 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4-6,15-19 and 25 is/are allowed.
- 6) ☒ Claim(s) 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. The indicated allowability of claims 23 and 24 is withdrawn in view of the newly discovered reference(s) to McGregor (U.S. 5,110,366) and Walker (US 3,833,123). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGregor (U.S. 5,110,366) in view of Walker (US 3,833,123).

McGregor teaches a system including a hopper **12** having upper and lower ends, and outer surfaces, and forward and rearward sides. A receiving tank **20**, having an open upper end, a closed lower end, and forward and rearward sides is in open communication with a lower end of the hopper. An elongated spray bar **24** located "adjacent" an upper end of the hopper **12** is connected to a source of water (col.3, lines 6-8) and sprays fluid therefrom. As evidenced in the embodiment shown in Figure 1, the distance between holes **34,36,38** proximate the midpoint of the spray bar **24** is smaller than the distance between the holes **30,32** proximate the opposite ends of the spray bar **24**. Moreover, each hole is sized to vary in diameter. See Figure 6A, wherein the nozzle hole **26** varies in diameter along its length. McGregor is silent with respect to a spray bar that is rotatably mounted.

Walker discloses a fluid dispenser having a longitudinally rotating spray bar **30** mounted within a hopper **8**. See col.5, line 50 to col.6, line 2; col.6, lines 43-45. The spray issuing from the spray bar is disclosed by McGregor to be effective in thoroughly contacting the intended surface when the spray bar is oscillated. See col.5, line 65 to col.6, line 3. As the spray bar mechanism of McGregor is capable of better fluid contact on the intended surface, it would have been an obvious substitution for the spray bar of McGregor.

Allowable Subject Matter

4. Claims 1, 2, 4-6, 15-19, and 25 are allowed.
5. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowance:

The prior art of record fails to teach or suggest a pivotally movable receiving tank in combination with a hopper and rotatably mounted spray bar.


7. The following is a statement of reasons for the indication of allowable subject matter:
While McGregor teaches nozzle holes that vary along their length, there is no teaching or suggestion to provide nozzle holes in McGregor wherein the diameters of the holes adjacent the midpoint of the spray bar are larger than the diameters of the holes adjacent the opposite ends of the spraybar.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Friday (5:30 am-2:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Leigh McKane
Primary Examiner
Art Unit 1744

elm
23 August 2006